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UNCLAS SECTION 01 OF 02 HANOI 001023

SIPDIS

DEPARTMENT FOR CA/OCS, CA/OCS/CI, CA/OCS/ACS/EAP,
CA/OCS/PRI, DEPARTMENT ALSO FOR CA/VO/F/P, EAP/BCLTV, AND
L/EAP
BANGKOK FOR DHS/DD
HO CHI MINH CITY FOR CONS AND DHS OIC

E.O. 12958: N/A

TAGS: [KOCI](#) [CVIS](#) [CASC](#) [PREL](#) [VM](#)

SUBJECT: Vietnam: Negotiations with the GVN on an Adoptions
Protocol in Hanoi

¶1. (SBU) Summary. Negotiations on an adoptions Protocol on
March 11 and 12 made progress, but final agreement was not
reached. Despite repeated USG assertions prior to the talks

that the USG would not negotiate a new treaty, the largest
sticking point for the GVN was their insistence on a treaty
that creates new legal rights and obligations for the USG
and American citizens. The GVN believes that they have
"treaties" with the five countries that have signed
agreements already, but L/CA's initial analysis of some of
those agreements indicates they fall short of treaty status
as that term is now interpreted by GVN. During
negotiations, the U.S. delegation repeatedly explained that
there is no need to create new legal obligations because the
necessary obligations are already in place under existing
Vietnamese and U.S. law. When asked what new obligations
the GVN would like to create in this Protocol, the GVN
delegation could not articulate anything specific, but
pointed instead to the requirement in the GVN's Decree
68/2002 that both countries sign an "international treaty"
before adoptions can take place. The GVN ended the talks on
March 12. Both sides agreed on "minutes," which included a
clear statement that the next step would be GVN submission
of written revisions to the amended draft submitted by the
U.S. team on the morning of March 12. Neither side
mentioned a date certain to continue discussions. See paras
11 and 12 for summary of agreed points and unresolved
issues. End Summary.

¶2. (SBU) Negotiations opened in a cooperative atmosphere on
March 11, but were immediately stymied by questions
regarding the title and the corresponding legal impact of
the document. Dr. Vu Duc Long, Acting Director of the
Department of International Adoptions and the head of the
GVN negotiating team, made repeated reference to the lengths
he had gone to within the GVN to gain acceptance for the
term "Protocol", and was staunch in his position that the
title must be either "Protocol" or "Agreement". The U.S.
side indicated flexibility, offering "Executive Agreement"
or inclusion of the term "Protocol" in the title, but this
only raised questions about the legal impact of the use of
such terms, and the GVN became entrenched in their position
that this document must create new legal rights and
obligations.

¶3. (SBU) Both sides agreed to set aside these questions for
later and to work from the draft text submitted under cover
of A/S Harty's November 20, 2003 letter, and turn to the
list of concerns provided by the GVN in response to that
draft in its diplomatic note dated January 15, 2004. Both
sides immediately agreed to the inclusion of additional
references to relevant Vietnamese law, and easily agreed to
incorporate those references (Article 3), along with Article
2, into the preamble.

¶4. (SBU) The afternoon's discussion continued through the
list of GVN comments, but again became bogged down -- this
time over the term "jurisdiction" and the applicability of
the document under discussion to Amcits living outside of
both the U.S. and Vietnam. The GVN was greatly concerned
with the inability to convey U.S. citizenship and welfare
protections on a child living in a third country and
insisted on applicability based on citizenship and
residence, terms that have little direct relevance to
adoption laws in the U.S. The U.S. team suggested that this
item (Article 4) be set aside, as discussion was not
progressing.

¶5. (SBU) Long highlighted one item in this article to be
addressed before moving on. He noted the unspecified
reference to "individuals" and requested that this be
changed to "legally married couples" to reflect this
requirement in Vietnamese law. U.S. negotiators pointed out
that the change is unnecessary because the unspecified
reference continues "eligible under applicable law". U.S.
negotiators also cited the Federal Defense of Marriage Act,
which defines "marriage" for Federal purposes consistent
with GVN's requirements. Nevertheless, at Vietnam's
insistence, we agreed to the change.

GVN Seeks to Add New Provisions

¶6. (SBU) The Vietnamese then proposed adding a provision on
exemption from consular legalization of documents in
adoption cases, in what they described as an attempt to
simplify the process for American parents. The Vietnamese

team agreed to draft and suggest language on the proposed exemption from "Consular legalization". This proposed language was not discussed further.

17. (SBU) Negotiations turned to the GVN's desire to include language in the Protocol referring to Vietnamese rules regarding the transparency of fees levied in adoption cases, and the GVN's requirement that foreign adoption service providers (ASPs) make charitable contributions to institutions in Vietnam. Dr. Long referred to the "Chinese model" where the Central Authority "controls how all the money is spent." The U.S. team applauded the GVN's desire to address the issue of transparency, and requested sample language from previous agreements reached with other states. The GVN promised to provide those provisions, but indicated that previous agreements had not achieved the level of transparency they truly wished. The U.S. team noted that such language appeared to relate more to ASP licensing rules, which would normally have no place in a Protocol, as the licensing rules should be uniform and apply to all foreign ASPs seeking to operate in Vietnam, not just U.S. ones. The U.S. team also noted, apparently to the surprise of the GVN team, that the U.S. does not have an adoption treaty or agreement with China.

18. (SBU) The GVN delegation expressed continuing concern over final recognition of adoptions and the question of an adopted child's nationality. Various language was proposed by both sides to reflect that each agreed to recognize adoption decrees issued by the other's competent authorities, unless contrary to public policy, and taking into account the best interests of the child. No final agreement on this language was reached; however, language proposed by the U.S. side was included in a revised draft of the Protocol submitted by the U.S. for further consideration by the GVN.

19. (SBU) The second day of negotiations on March 12 again quickly foundered on the question of the document's legal impact. Both sides agreed to the title "Protocol between the United States of America and the Socialist Republic of Vietnam Regarding Cooperation in the Adoption of Children in Furtherance of the Principles and Provisions of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption". The GVN delegation then returned to the previous day's discussion of whether the U.S. side viewed the Protocol as a document creating new legal rights and obligations affecting all levels of U.S. government and all citizens. The U.S. team again asked what the GVN wanted to enforce that did not already exist under the respective laws of the two states, and challenged the idea that this document would create new law that would be binding on the provinces of Vietnam. The Vietnamese side halted negotiations at this point, insisting that any final document must create new (unspecified) legal obligations. The GVN then proposed that, since the two sides could not reach agreement on the legal impact issue, that the talks be suspended without addressing other outstanding issues. Formal negotiations thus concluded mid-morning March 12.

110. (SBU) The Vietnamese team drafted "minutes" highlighting the accomplishments of the discussions, and the morning session ended cordially, but with some frustration on both sides. While both sides held to their respective positions on the issue re: creating a treaty with new legal obligations versus a statement of understanding of existing laws, both sides also indicated that this issue is not insurmountable and their strong interest in continuing discussions after consultation with respective capitals. Included in the "minutes" was a clear statement that the next step would be GVN submission of written revisions to the amended draft submitted by the U.S. team on the morning of March 12th. The U.S. delegation made clear that the existing draft text was acceptable to the U.S. side and the USG awaited GVN revisions to that document. Neither side mentioned a date certain to continue discussions.

What We Agreed On

111. (SBU) Despite the lack of a final document, several items were agreed upon during the discussions: a title was found that suited both parties' needs; we agreed upon the inclusion of several additional GVN legal citations in Article 2 of the Preamble; Article 3 was moved to the Preamble; Article 4 was changed to read "legally married couples", in lieu of "individuals"; the GVN team agreed to propose language regarding transparency of fees; the GVN team agreed to draft language on exemption from "Consular legalization"; both parties agreed to work from the amended draft submitted by the U.S. team on the morning of March 12; and both parties committed to continuing discussions after consultation in capitals.

What Still Needs to Be Addressed:

112. (SBU) The sticking point for the GVN is clearly the intent of the document and the legal obligations it creates, while the U.S. side cannot agree to a "bilateral treaty, as has been repeatedly mentioned to them. The GVN also would like to restrict "jurisdiction" of the document to citizens residing in either country, but not including U.S. or Vietnamese citizens in a third country. The GVN would like to exempt all related documentation from "Consular legalization", which might be difficult for the U.S., as we

could not guarantee an individual State would not require such documents. The GVN wished to include several provisions already present in Vietnamese decrees or laws, such as transparency of fees and required humanitarian donations from ASPs. These items seem more appropriately confined to licensing regulations for those organizations.

Comment

13. (SBU) It seemed very clear that the GVN was uncomfortable with any document that could not be considered a bilateral treaty, creating new obligations between the parties. This position was unacceptable to the U.S. delegation, a position that had been explained to the GVN repeatedly in the lead up to these discussions. Many of the provisions the GVN proposed including already exist in GVN decrees establishing and implementing regulations on adoptions within Vietnam. Despite USG assurances that U.S. citizens who wished to adopt in Vietnam were subject to all GVN laws and regulations within Vietnam, they appear to want to restate many of those regulations within the text of the Protocol. It appears the Vietnamese want a "bilateral treaty" to reiterate many provisions of GVN law, in order to assist them with implementation enforcement at the local level in Vietnam.

14. (SBU) Ironically, many of the issues raised by the GVN negotiators were issues of implementation of adoption regulations, a concern shared by the U.S. side. The U.S. delegation handed a non-paper on implementation issues to the Vietnamese side at the end of the first day. It listed continuing concerns over implementation guidelines contained in current Vietnamese adoption regulations and a request for clarification of several issues. Given the lack of progress on the text of the Protocol, however, there was no further discussion of these items. These concerns about implementation remain a priority for the Mission, as a return to the status quo ante would offset the best intentions of any agreement, and not be in keeping with the best interests of the children, birth parents and adopting parents involved.

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